

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, HAROLD
DUTTON, JR. AND GREGORY TAMEZ

Plaintiffs

v.

STATE OF TEXAS; RICK PERRY,
in his official capacity as Governor of the
State of Texas; DAVID DEWHURST,
in his official capacity as Lieutenant
Governor of the State of Texas; JOE
STRAUS, in his official capacity as
Speaker of the Texas House of
Representatives; HOPE ANDRADE,
in her official capacity as Secretary of
State of the State of Texas

Defendants.

MEXICAN AMERICAN LEGISLATIVE
CAUCUS, TEXAS HOUSE OF
REPRESENTATIVES (MALC)

Plaintiffs,

v.

STATE OF TEXAS; RICK PERRY, In His
Official Capacity as Governor of the State
of Texas; DAVID DEWHURST, In His
Official Capacity as Lieutenant Governor of
the State of Texas, and JOE STRAUS, In
His Official Capacity as Speaker of the
House of Representative,

Defendants.

CIVIL ACTION NO.
SA-11-CA-360-OLG-JES-XR
[Lead case]

CIVIL ACTION NO.
No. SA-11-CV-361 OLG-JES-XR
[Consolidated case]

Texas Democratic Party and Boyd Richie (hereinafter “TDP”) make this Cross-Claim as follows:

1. The State's plan to redistrict the Texas House of Representatives and the Texas Delegation to the United States House of Representatives is a blatant partisan gerrymander that is designed to ensure that Republicans continue to control the Texas Congressional Delegation and the Texas House of Representatives. The plan includes a number of congressional and house districts that far exceed Republican's share of the State's electorate.

II. Jurisdiction and Venue

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, and 2284; and pursuant to 42 U.S.C. §§ 1973c, 1973j(f). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 2284, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue is proper pursuant to 28 U.S.C. § 1391(b).

III. Parties

3. Cross-Claimant, the Texas Democratic Party, is one of the two major political parties in Texas and is formed under provisions of the Texas Election Code. It may be served through its counsel herein.

4. Cross-Claimant, Boyd Richie, is the duly elected Chairman of the Texas Democratic Party and the State Democratic Executive Committee, as recognized under Texas election laws. Cross-Claimant Richie is a registered and participating voter in Young County, Texas and may be served through counsel herein.

5. Cross-Defendant, RICK PERRY, is the Governor of the State of Texas and Chief Executive Officer of the State of Texas. Cross-Defendant PERRY is sued in his official capacity.

6. Cross-Defendant, HOPE ANDRADE, is Texas Secretary of State. Cross-Defendant ANDRADE is sued in her official capacity. Cross-Defendant ANDRADE is responsible for administering and supervising the elections of United States Representatives from the

State of Texas. Cross-Defendant ANDRADE is responsible for administering and supervising the elections of the Texas House of Representatives.

IV. Facts

7. The Texas Legislature has adopted redistricting plans for the Texas House of Representatives and for the United States House of Representatives.

8. Pursuant to §5 of the Voting Rights Act, the State of Texas has submitted these plans to the United States Department of Justice and the United States District Court for the District of Columbia for preclearance.

9. To date, there has been no ruling on preclearance.

10. TDP alleges the plans are not entitled to preclearance because they violate the federal constitution and the federal Voting Rights Act.

11. Even if the plans are entitled to preclearance, TDP intends to prove the plans adopted are illegal political gerrymanders, and therefore should not, in accordance with the law, take effect.

12. Allowing the plans to take effect would significantly harm the First Amendment speech and associational rights of cross-claimants.

13. The plans, as adopted, fail to provide fair and reasonable districts in proportion to the members of cross-claimants' political association.

V. Claims

Count 1

14. Plaintiffs reallege the facts set forth in the paragraphs above.

15. The partisan classifications in the State's Plan were applied in an invidious manner and in a way unrelated to any legitimate legislative objective. The State's Plan is an intentional partisan gerrymander that thwarts majority rule and is an affront to basic democratic values in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Article I, Sections 2 and 4, of the United States Constitution and the First Amendment to the United States Constitution.

16. The partisan construction of the plan is invidious to the First Amendment Speech and Associational Rights of Plaintiffs.

Count 2

17. Plaintiffs reallege the facts set forth in the paragraphs above.

18. The redistricting plan complained of herein cannot be administered because it has not been precleared pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

VI. Prayer for Relief

WHEREFORE, Cross-Claimants respectfully pray that this Court:

1. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that the State's 2011 plan for redistricting of the Texas House of Representatives and the Texas Delegation to the United States House of Representatives is an unconstitutional political gerrymander in violation of the First and Fourteenth Amendments to the United States Constitution and Article I of the United States Constitution; and cannot be

administered pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c.

2. Issue preliminary and permanent injunctions enjoining the Cross-Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed district boundaries as drawn in the 2011 plan for Texas House of Representatives and the Texas Delegation to the United States House of Representatives, including enjoining Cross-Defendants from conducting any elections based on the 2011 plan.
3. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case.
4. Issue an order requiring Defendants to pay Plaintiffs' costs, expenses, and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988.

Grant such other and further relief as it seems is proper and just.

Dated this 19th day of July, 2011.

Respectfully submitted,

BRAZIL & DUNN

/s/ Chad W. Dunn

Chad W. Dunn – Attorney in Charge

Texas State Bar No. 24036507

K. Scott Brazil

Texas State Bar No. 02934050

4201 FM 1960 West, Suite 530

Houston, Texas 77068

Telephone (281) 580-6310

Facsimile (281) 580-6362

ATTORNEYS FOR TEXAS DEMOCRATIC
PARTY and BOYD RICHIE

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2011, I electronically filed the foregoing document with the Clerk of the United States District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all interested attorneys of record.

/s/ Chad W. Dunn
Chad W. Dunn